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MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.
1800 DIAGONAL ROAD
SUITE 370
ALEXANDRIA VA 22314

In re Application of: OZAKI, et al.
Application No. 10/766,850
Filed: January 30, 2004
For: STORAGE SYSTEM, STORAGE CONTROL
DEVICE, AND DATA RELAY METHOD USING
STORAGE CONTROL DEVICE

DECISION ON PETITION
TO MAKE SPECIAL
(ACCELERATED EXAMINATION)
UNDER M.P.E.P. §708.02 (VIII)

This is a response to the renewed petition filed 28 June 2005, under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02 (VIII): Accelerated Examination, to make the above-identified application special. The renewed petition was filed in response to a dismissal of the original petition filed 31 March 2005.

The Petition is **DENIED**.

M.P.E.P. §708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. §1.102(d) states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

...

(e) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

The original petition was dismissed for failing to meet requirement (e).

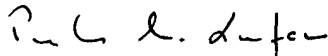
The renewed petition filed 28 June 2005 also fails to adequately meet requirement (e) of the criteria set forth above. The discussion of the references still does not point out with the particularity required by 37 CFR 1.111(b) and (c) how the claimed subject matter is patentable over the references. The petition identifies a numbered feature for each independent claim. The petition states that the cited references fail to teach or suggest these features "in combination with the other limitations recited in each of the independent claims" (pages 2-8 of the petition). This statement in effect states that the entirety of the independent claim is not disclosed by the reference. A statement that the entirety of each independent claim is not disclosed by the references purported to be "most closely related" is not a sufficient detailed description as to anticipation. The petitions fail to point out which particular feature or features are not

shown by the references such that the claims are not anticipated. I.e., regarding anticipation, stating that the references fail to show the claim in its entirety is simply a general allegation that does not comply with the requirements of 37 CFR 1.111(b) and (c).

Also, on page 3 of the petition, it is stated that "[t]o the extent applicable to the present Petition, Applicants submit that although the distinguishing feature(s) may represent a substantial portion of the claimed invention, the claimed invention including said feature(s) and their inter-operation provides a novel storage system and system and method related to or implemented in or by said storage system." It is not clear if the statement is applicable to the present petition or not. The language "to the extent applicable to the present Petition" gives no indication as to whether the statement actually applies in the instant application or not. Rather, this language is generic to practically any petition of this type and is not specific to the instant application. If the combination of elements referred to do in fact constitute a substantial portion of the claim, then this should be stated. Also, if the combination of elements is necessary because, e.g., there is a necessary interoperability among these elements, then this too should be stated and the reasons for the, e.g., necessary interoperability, discussed.

Petition to Make Special **DENIED**.

The application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.



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